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Attorneys for Defendant Tony Klein

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORLTAND DIVISION

|  |   |                               |
|--|---|-------------------------------|
| LISA CULLEY,                                     | ) | Case No. 3:19-cv-00926-MO     |
|  | ) |                               |
| Plaintiff,                                       | ) | <b>DEFENDANT TONY KLEIN'S</b> |
|  | ) | <b>ANSWER</b>                 |
| v.   | ) |                               |
|  | ) |                               |
| Oregon Department of Corrections (ODOC) Director | ) |                               |
| Colette Peters, ODOC PREA Coordinator Ms. Ericka | ) |                               |
| Sage, ODOC Deputy Director Brian Belleque, Tony  | ) |                               |
| Klein, ODOC Past Chief Medical Officer Dr. Steve | ) |                               |
| Shelton, ODOC Present Chief Medical Officer Dr.  | ) |                               |
| Christopher DiGiulio, ODOC Assistant Director of | ) |                               |
| Correctional Services Heidi Steward, ODOC Health | ) |                               |
| Services Manager Joe Bugher, Joe DeCamp, ODOC    | ) |                               |
| Chief Clinical Officer Dr. Danielle Fuzi, ODOC   | ) |                               |
| Chief Psychologist Dr. Don Dravis, ODOC          | ) |                               |
| Behavioral Health Services Administrator Dawnell | ) |                               |
| Meyer, ODOC Assistant Director of Operations     | ) |                               |
| Michael Gower, ODOC Past Superintendent Rob      | ) |                               |
| Persson, John/Jane Doe CCCF Medical Director,    | ) |                               |
| Jane Doe CCCF Nursing Manager, John/Jane Doe     | ) |                               |
| BHS Counselors, John/Jane Doe Nurses, John/Jane  | ) |                               |
| Doe Security Staff, and State of Oregon,         | ) |                               |
|  | ) |                               |
| Defendants.                                      | ) |                               |

For his Answer, Defendant-Tony Klein ("Klein") hereby admits, denies, and alleges as follows:

1.

Paragraph 1 is DENIED.

2.

Paragraph 2 is ADMITTED.

3.

Paragraph 3 is ADMITTED.

4.

Paragraph 4 is DENIED.

5.

Paragraph 5 is ADMITTED.

6.

Paragraph 6 is admitted in part and denied in part as follows: Klein ADMITS that Collette Peters is the Director of ODOC and responsible for ODOC, including compliance matters, generally. Klein has insufficient information about Collette Peters' actions and relationship with the Governor to admit or deny the balance of allegations and on that basis DENIES the same.

7.

Paragraph 7 is admitted in part and denied in part as follows: Klein ADMITS that Brian Belleque is the Deputy Director of ODOC, Klein has insufficient information about Brian Belleque's duties to admit the balance of allegations and on that basis DENIES the same.

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2 – DEFENDANT TONY KLEIN'S ANSWER  
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8.

Paragraph 8 is admitted and denied as follows: Klein ADMITS that Michael Gower is the Assistant Director of Operations at ODOC, Klein has insufficient information about Michael Gower's duties to admit or deny the balance of allegations and on that basis DENIES the same.

9.

Paragraph 9 is admitted in part and denied in part as follows: Klein ADMITS that Ericka Sage was the PREA Coordinator for ODOC, but Klein DENIES that Ericka Sage no longer holds that position and Klein has insufficient information to admit or deny the balance of allegations and on that basis DENIES the same.

10.

Paragraph 10 is ADMITTED.

11.

Paragraph 11 is admitted in part and denied in part as follows: Klein ADMITS that Heidi Steward was the Assistant Director of Correctional Services for ODOC as alleged, Klein has insufficient information to admit or deny the balance of allegations and on that basis DENIES the same.

12.

Paragraph 12 is ADMITTED.

13.

Paragraph 13 is ADMITTED.

14.

Paragraph 14 is ADMITTED.

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3 – DEFENDANT TONY KLEIN’S ANSWER  
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15.

Paragraph 15 is ADMITTED.

16.

Paragraph 16 is ADMITTED.

17.

Paragraph 17 is ADMITTED.

18.

Klein has insufficient information to admit or deny paragraph 18 and on that basis DENIES the same.

19.

Paragraph 19 is ADMITTED.

20.

Klein has insufficient information to admit or deny paragraph 20 and on that basis DENIES the same.

21.

Klein has insufficient information to admit or deny paragraph 21 and on that basis DENIES the same.

22.

Klein has insufficient information to admit or deny paragraph 22 and on that basis DENIES the same.

23.

Klein has insufficient information to admit or deny paragraph 23 and on that basis DENIES the same.

24.

Paragraph 24 is ADMITTED.

25.

Paragraph 25 is ADMITTED.

26.

Klein has insufficient information to admit or deny paragraph 26 and on that basis DENIES the same.

27.

Paragraph 27 is DENIED.

28.

Paragraph 28 is DENIED.

29.

Paragraph 29 is DENIED.

30.

Paragraph 30 does not call for an admission or denial, ORS 423.020 speaks for itself.

31.

Paragraph 31 does not call for an admission or denial, ORS 423.075 speaks for itself.

32.

Klein has insufficient information about the timing of adoption of “the final rule” regarding PREA by the Oregon Department of Justice, and on that basis DENIES the same.

33.

Paragraph 33 is ADMITTED.

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34.

Paragraph 34 does not call for an admission or denial, OAR 291-124-0016(1) speaks for itself.

35.

Paragraph 36 does not call for an admission or denial, OAR 291-124-0016(2) speaks for itself.

36.

Paragraph 35 does not call for an admission or denial, OAR 291-124-0016(4) speaks for itself, although Klein notes the complaint also quotes OAR 291-124-0016(5) but omits a citation.

37.

Paragraph 37 does not call for an admission or denial, OAR 291-124-0016(6) speaks for itself.

38.

Paragraph 38 does not call for an admission or denial, OAR 291-124-0016(9) speaks for itself.

39.

Klein has insufficient information to admit or deny paragraph 39 and on that basis DENIES the same.

40.

Klein has insufficient information to admit or deny paragraph 40 and on that basis DENIES the same.

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6 – DEFENDANT TONY KLEIN’S ANSWER  
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41.

Klein has insufficient information to admit or deny paragraph 41 and on that basis DENIES the same.

42.

Paragraph 42 is ADMITTED.

43.

Paragraph 43 is ADMITTED.

44.

Paragraph 44 is admitted in part and denied in part as follows: Klein ADMITS that female prisoners could sign up for "triage" as one way to receive medical treatment and that the nurses made the decision about whether or not the inmate needed to see a physician. The balance of the allegations is DENIED.

45.

Paragraph 45 is ADMITTED.

46.

Paragraph 46 is DENIED.

47.

Paragraph 47 is admitted in part and denied in part as follows: Klein ADMITS that he worked in triage, that he also worked in medical services, and that he oversaw inmate orderlies; the balance of allegations is DENIED.

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48.

Paragraph 48 is admitted in part and denied in part as follows: Klein ADMITS that he was exposed to one-on-one situations with inmate orderlies from time to time, the balance of the allegations is DENIED.

49.

Paragraph 49 is admitted in part and denied in part as follows: Klein ADMITS that he was unsupervised at times, and that he could summon inmates to report to medical, Klein DENIES the balance of allegations.

50.

Paragraph 50 is DENIED.

51.

Paragraph 51 is DENIED.

52.

Paragraph 52 is admitted in part and denied in part as follows: Klein ADMITS that he wore scrubs at work, the balance of allegations is DENIED.

53.

Paragraph 53 is DENIED.

54.

Paragraph 54 is DENIED.

55.

Paragraph 55 is ADMITTED.

56.

Paragraph 56 is ADMITTED.

57.

Paragraph 57 is ADMITTED.

58.

Klein has insufficient information to admit or deny the allegations in paragraph 58 and on that basis DENIES the same.

59.

Klein has insufficient information to admit or deny the allegations in paragraph 59 and on that basis DENIES the same.

60.

Paragraph 60 is ADMITTED.

61.

Paragraph 61 is ADMITTED.

62.

Paragraph 62 is ADMITTED.

63.

Paragraph 63 is ADMITTED.

64.

Paragraph 64 does not call for an admission or denial, ODOC Rule 40.1.13(III)(A)(1) speaks for itself.

65.

Paragraph 65 does not call for an admission or denial, ODOC Rule 40.1.13(III)(A)(3) speaks for itself.

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9 – DEFENDANT TONY KLEIN’S ANSWER  
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66.

Paragraph 66 does not call for an admission or denial, ODOC Rule 40.1.13(III)(A)(9) speaks for itself.

67.

Paragraph 67 is ADMITTED.

68.

Paragraph 68 is admitted in part and denied in part as follows: Klein ADMITS that ODOC Policy 40 requires that inmates subject to sex abuse will have access to services, Klein DENIES that Rule 40.1.13(III)(D)(1)(f) mandates discipline for inmates reporting sex abuse in bad faith; instead that rule restricts discipline for inmate reports of sex abuse to reports made in “bad faith” (as opposed to reports that are merely unfounded), and further, that rule does not mandate discipline, instead ODOC “may” impose discipline for “bad faith reports.”

69.

Paragraph 69 is ADMITTED.

70.

Paragraph 70 is admitted in part and denied in part as follows: Klein ADMITS that ODOC 40.1.13(III)(E)(2), states that the PREA Coordinator retains the responsibility as alleged as part of a larger policy, Klein has insufficient information to admit or deny the allegation about how ODOC “typically” handles other unalleged incidents and on that basis DENIES that allegation.

71.

Paragraph 71 is ADMITTED per ODOC Policy 40.1.13(III)(H)(1)(a) – (f).

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72.

Paragraph 72 is ADMITTED per ODOC Policy 40.1.13(III)(H)(2)(a) – (e).

73.

Klein has insufficient information to admit or deny the allegations in paragraph 73 and on that basis DENIES the same.

74.

Klein has insufficient information to admit or deny the allegations in paragraph 74 and on that basis DENIES the same.

75.

Klein has insufficient information to admit or deny the allegations in paragraph 75 and on that basis DENIES the same.

76.

Paragraph 76 is admitted in part and denied in part as follows: Klein ADMITS that Plaintiff had a device installed to monitor her cardiac activity; Klein DENIES that downloading information from that device had to be done in the infirmary.

77.

Paragraph 77 is ADMITTED.

78.

Paragraph 78 is DENIED.

79.

Paragraph 79 is DENIED.

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11 – DEFENDANT TONY KLEIN’S ANSWER  
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80.

Klein has insufficient information to admit or deny what Plaintiff "heard from other women" and on that basis DENIES the allegations of paragraph 80.

81.

Klein has insufficient information to admit or deny the allegations in paragraph 81 and on that basis DENIES the same.

82.

To the extent this paragraph makes factual allegations, as opposed to hyperbole, it is DENIED.

83.

Paragraph 83 is DENIED.

84.

Paragraph 84 is DENIED.

85.

Paragraph 85 is admitted and denied as set forth above.

86.

Paragraph 86 is ADMITTED.

87.

Paragraph 87 is DENIED.

88.

Paragraph 88 and all subparts thereto are DENIED.

89.

Paragraph 89 is DENIED.

90.

Paragraph 90 is DENIED.

91.

Paragraph 91 is DENIED.

92.

Paragraph 92 is DENIED.

93.

Paragraph 93 is admitted and denied as set forth above.

94.

Paragraph 94 is ADMITTED.

95.

Paragraph 95 is ADMITTED.

96.

Paragraph 96 and all subparts thereto are DENIED.

97.

Paragraph 97 is DENIED.

98.

Paragraph 98 is admitted and denied as set forth above.

99.

Paragraph 99 is ADMITTED.

100.

Klein has insufficient information to admit or deny the allegations in paragraph 100 and on that basis DENIES the same.

101.

Paragraph 101 is ADMITTED.

102.

Paragraph 102 is DENIED.

103.

Paragraph 103 is DENIED.

104.

The allegations contained in paragraph 104 through 121 do not pertain to Klein, to the extent any allegations in those paragraphs are construed as allegations against Klein, they are hereby DENIED.

WHEREFORE, having answered Plaintiff's complaint, Klein hereby states and alleges the following for his affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE:  
(Statute of Limitations)**

1.

Klein incorporates the admissions, denials, and allegations above, herein.

2.

Some or all of Plaintiff's allegations against Klein are barred by the statute of limitations.

3.

The theory of "continuing tort" is not available to toll or extend the statute of limitations.

**SECOND AFFIRMATIVE DEFENSE:  
(Oregon Tort Claims Act)**

4.

Klein incorporates the admissions, denials, and allegations above, herein.

5.

Plaintiff's state law claims are subject to the Oregon Tort Claims Act, specifically including provisions requiring timely and adequate notice as well as damages caps.

**THIRD AFFIRMATIVE DEFENSE:  
(Prison Litigation Reform Act)**

6.

Klein incorporates the admissions, denials, and allegations above, herein.

7.

Klein raises the provisions of the Prison Litigation Reform Act to all claims brought under 42 U.S.C. § 1983.

**FOURTH AFFIRMATIVE DEFENSE:  
(Reservation)**

8.

Klein reserves the right to raise additional, new defenses as those defenses may become known to him through discovery.

WHEREFORE, Klein prays for judgment in his favor, including attorney's fees and costs, and denying Plaintiff any relief whatsoever.

Dated this 3rd day of July, 2019.

HELTZEL WILLIAMS PC

s/Andrew D. Campbell  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the attached **DEFENDANT TONY KLEIN'S ANSWER** on the following attorneys:

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Attorneys for Group Defendants

- By mailing to said attorney(s) a full and correct copy therefor, contained in a sealed envelope, with postage paid, addressed to said attorney(s) as stated above and deposited in the United States Post Office at Salem, Oregon.
- By hand delivering to said attorney(s) a true copy thereof.
- By emailing to said attorney(s) at their above listed email address(es) a true copy thereof.
- By electronic filing with the District Court's CM/ECF system. The CM/ECF system generated Notice of Electronic Filing constitutes proof of service upon a Filing User in accordance with Fed. R. Civ. P. 5(d).

Dated this 3rd day of July, 2019.

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